

Council of the District of Columbia Committee of the Whole Report

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1350 Pennsylvania Avenue NW

Washington DC 20004

To: Members of the Council of the District of Columbia

From: Linda W. Cropp, Chairman, Committee of the Whole

Date: July 6, 2005

Subject: PR 16-47, "Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2005"

The Committee of the Whole, to which PR 16-47, "Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2005," was referred, reports favorably on the resolution and recommends its adoption by the Council of the District of Columbia.

Statement of Purpose and Effect

PR 16-47 declares the sense of the Council with respect to the need to amend the Zoning Regulations to adopt a mandatory inclusionary zoning policy that requires new and substantially rehabilitated residential developments to include housing units affordable to low and moderate income residents in exchange for permitting housing developers to obtain additional zoning density as a matter of right.

Legislative History

November 9, 2004

PR 15-1194, "Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2004," introduced by Chairman Cropp, and co-sponsored by Councilmembers Patterson, Fenty, Allen, Catania, Orange, Schwartz and Graham, and referred to the Committee of the Whole

November 19, 2004

Notice of intent to act on PR 15-1194

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December 3, 2004 published in <i>D C Register</i>	published in <i>D C Register</i> Notice of public roundtable on PR 15-1194
December 8, 2004	Public roundtable on PR 15-1194
January 4, 2005	PR 16-47 introduced by Chairman Cropp, and co-sponsored by Councilmembers Fenty, Brown, Catania, Schwartz, Mendelson, Graham, Patterson, Gray, Barry and Evans, and referred to the Committee of the Whole
January 14, 2005	Notice of intent to act on PR 16-47 published in <i>D.C Register</i>
January 14, 2005	Notice of public roundtable on PR 16-47 published in <i>D C Register</i>
January 25, 2005	Public roundtable on PR 16-47
July 6, 2005	Committee mark-up of PR 16-47

Committee Reasoning –Background and Need

Inclusionary Zoning (“IZ”) is a technique used by jurisdictions to ensure a mix of affordable housing units with market rate housing developments. Typically, IZ either requires that each new housing development make a certain percentage of units affordable to a specific income range, or provides incentives such as additional zoning density as compensation for the requirements. The Zoning Commission for the District of Columbia currently has a case pending before it (Case No. 04-33) initiated by the November 17, 2004 filing of a petition by the Campaign for Mandatory Inclusionary Zoning (“CMIZ”), on which public hearings have been scheduled for July 25 and 28, 2005. The Office of Planning (“OP”), after extensive analysis and a series of continuing discussions with representatives of CMIZ, the housing development community, and the Council Chairman, has recommended a somewhat different mandatory inclusionary zoning program which seeks to mitigate concerns raised in the development community. It is important for the Council’s strong support of mandatory inclusionary zoning to be part of the record of this zoning case, along with the commitment to enact legislation necessary to implement the program.

For almost 30 years, hundreds of cities and counties throughout the United States, including areas neighboring the District, have been using inclusionary zoning to help meet their affordable housing needs and build vibrant, mixed income

communities. By adopting an inclusionary zoning policy, the District could (1) Increase the supply of affordable housing for lower and middle income families and workers, (2) Support the creation of mixed income communities; (3) Prevent rising prices from driving out low and moderate income residents; and (4) Leverage the expertise and capacity of the private market to develop affordable housing

Inclusionary zoning is only one of many strategies that are currently being examined and adopted to address the critical need to maintain and increase the supply of quality affordable housing in the District. The Council and the Mayor already have taken numerous actions to address the crisis regarding the lack of affordable housing in the District, and the Comprehensive Housing Strategy Task Force, established by the Council and the Mayor last year, will soon be issuing a report with several recommendations to address this important issue.

The District during the past few years has been one of the hottest real estate markets in the United States. Although rising property values help build wealth of District homeowners and generate additional revenue to the District that both helps fund the District's many social service and other needs and also help maintain a balanced budget, rising property values also present challenges to the District and its residents. As a result of public and private investments, the District has finally begun to reverse the decades-long decline in residential population and now has a goal to gain tens of thousands of new residents during the next decade. At the same time, policies must be in place to ensure that existing residents can afford to remain here, and that new and renovated housing is affordable across a wide range of income levels.

The strength of the District, and of any healthy jurisdiction, can be found in its diversity, and mixed income neighborhoods are healthy neighborhoods. In order to ensure that the District does not become a city that is comprised of only the very rich and the very poor, the District must have a variety of housing choices for low and moderate income households, and for working and middle class families who are an important component of the District's workforce. The District's long-term economic survival requires the adoption of policies to ensure that more of the District's workers, whether in the private or public sector, live in the District, and pay income taxes to the District.

In recent years, the District has adopted several programs to help maintain and increase the supply of affordable housing. For example, the District has begun to require that all new residential developments on land disposed of by the District have a certain percentage set aside for low and moderate income households. The District also has funded for the first time a Housing Production Trust Fund with a substantial, reliable, and predictable annual stream of revenue to help fund affordable housing construction and renovation.

For homeowners, the Council has enacted legislation to cap the annual payment of property tax assessments to no more than 10%. For renters, the District has had longstanding policies in support of rent control, which has recently been statutorily extended, and in support of providing tenants with the first opportunity to purchase their apartment buildings when they are put up for sale. In street and alley closings, the Comprehensive Plan requires developers who

have obtained additional commercial office space from these closings to contribute a certain amount of funds towards the production of low and moderate income housing. In Planned Unit Development zoning cases, upon the recommendation of the Office of Planning, the Zoning Commission has begun to require residential developers who receive bonus density increases to set aside a percentage of the new housing for low and moderate income residents

Inclusionary zoning is a tool to attract new residents and support existing residents by requiring the production of affordable housing in developments throughout the District. However, in order for these requirements to work, developers must be provided with sufficient compensation in the form of density bonuses, zoning variances, and other incentives

The District faces unique challenges to the adoption of a successful mandatory inclusionary policy. The District is primarily a built urban environment with mostly infill development opportunities, which are further constrained by Federal height limitations and historic preservation requirements. In addition, many existing stable neighborhoods, even those with Metrorail stops where additional development is permitted under zoning or the Comprehensive Plan, resist increased height and density in their communities.

An inclusionary zoning policy must strike a balance that supports sustained growth within the parameters of the Comprehensive Plan, ensures affordability within developments, includes incentives for development to occur throughout the District, and promotes fairness and predictability

Many factors make it a critical time to implement a mandatory inclusionary zoning policy in the District. These factors include renewed residential investment, an escalating housing market, increasing housing cost burdens on residents and newcomers, increased displacement, and an ambitious Mayoral plan to attract tens of thousands of new residents. The District can make a major stride toward meeting its twin goals of growth and affordability by committing to one of the most effective tools in the affordable housing toolkit – inclusionary zoning.

PR 16-47 would declare the the sense of the Council that the Zoning Commission and the Mayor should support timely adoption of a mandatory inclusionary zoning policy that includes the following components.

(1) An inclusionary zoning overlay should be mapped for those areas of the District where at least 20% extra zoning density bonus could be appropriately provided and obtained within the parameters of the Comprehensive Plan.

(2) For new and substantial rehabilitated residential developments of 10 or more ownership or rental units within the mapped inclusionary zoning overlay, certain minimum percentages of affordable housing should be required to be set aside for low and moderate income residents. In return, developers can elect to take a 20% density bonus as a matter of right, in addition to the provision of other developer compensation and cost reduction strategies.

(3) Since the District has affordable housing needs across a range of income levels, tiered

income targets should be established. For example, half of the required affordable units should be affordable to households at 50% of Area Median Income ("AMI"), and half should be affordable to households at 80% of AMI

(4) To make the units affordable to lower income households at 30% of AMI or less, the D.C. Housing Authority ("DCHA") and qualified non-profits should have the first right to purchase or rent a certain percentage of the inclusionary units, and any of the units not optioned by DCHA or nonprofits that are affordable to households at 50% AMI should be prioritized for a separate lottery of Housing Choice Voucher holders on the inclusionary zoning waiting list who indicate interest in the units. If there are no voucher holders to rent them, the unclaimed portion of the inclusionary zoning units should be distributed to the general applicant pool

(5) Certain construction requirements should apply. Developers should be required to build inclusionary units within the larger market rate development. Production of affordable and market rate units should proceed simultaneously. Exceptions should be made only when the development can demonstrate that on-site development would create undue economic hardship. Examples of hardship include but are not limited to retirement housing communities with expensive bundled services, and developments with high condominium fees that cannot be reduced to affordable levels even after non-essential amenity and recreational costs are separated out in order to meet the affordability required for targeted income groups. When exceptions are granted, the administrative agency would be authorized to require the developer to construct the same number of units either off-site either within the same ward or within two miles of the development project, or make an in-lieu payment to the Housing Production Trust Fund. A developer also should be able to apply for an exemption from the requirements of the program where compliance would deprive the developer of all economically viable use of the property

(6) Certain design standards should also apply for inclusionary units. For example, affordable units should be similar to and compatible with market rate units in outward appearance, number of bedrooms, and location throughout the project, but size of affordable units may be reduced to a minimum standard. Interior finishes, appliances, and amenities need not be compatible with market rate units.

(7) The inclusionary zoning program should require long-term affordability control periods, in order to build a stock of affordable housing, encourage neighborhood stabilization, and promote economic and racial diversity. This goal should be balanced with the objective of maintaining the opportunity for families to build wealth through homeownership

(8) The inclusionary zoning policy that is adopted should be clear about the administration and enforcement of the requirements. The Mayor should expeditiously prepare and submit to the Council legislation that is necessary to implement and facilitate the inclusionary zoning program

Impact on Existing Law

The adoption of PR 16-47 has no impact on existing law. If the Zoning Commission exercises its authority to propose adoption of text and map amendments to require an inclusionary zoning program in the District, as requested by the Council, the Council and Mayor will likely need to enact legislation to address how certain aspects of the program are administered and enforced.

The Zoning Commission's notice of public hearing on the inclusionary zoning case, drafted by the Office of the Attorney General, noted that the CMIZ petition "requested that the Commission direct the Mayor to, among other things, determine a project's compliance with the program, inform the public about the program, review requests and determine the eligibility of persons seeking housing under the program, establish maximum rents and purchase prices, deny all permits to non-complying property owners, and to place liens on a project's market rate units for each affordable unit permitted to be accounted for off-site, until a certificate of occupancy for the affordable unit is issued. The Zoning Commission has no authority to direct the Mayor to undertake these or any other functions. To the extent the Mayor does not already possess such authority, the Council of the District of Columbia will need to bestow it. Until the Council does so, the authority to "administer and enforce" this and all other zoning provisions will continue to reside in Department of Consumer and Regulatory Affairs pursuant to Part II, E of Reorganization Plan No. 1 of 1982, effective July 3, 1982 (D.C. Official Code § 1-15-07 (2001) and Part II, B, 1 of Reorganization Plan No. 1 of 1983 (D.C. Official Code § 1-15-9)).

"In addition, because this program will be a zoning regulation, any request to waive its requirements, which would involve the exercise of discretion, must be heard and decided by the Board of Zoning Adjustment or the Commission. The requirement that such proceedings involve full evidentiary hearings, parties, and other procedural safeguards results from the requirements of section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-509). Any relaxation of these requirements must also come from the Council."

Section-by-Section Analysis

Section 1 provides a short title, Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2005

Section 2 states the findings of the Council, which are included in the Committee Reasoning section of this Report

Section 3 declares the sense of the Council that the Zoning Commission and the Mayor should support timely adoption of a mandatory inclusionary zoning policy that includes certain components and principles, which are included in the Committee Reasoning section of this Report.

Section 4 requires the transmittal of the adopted resolution to the Zoning Commission, the Mayor, and the Director of the Office of Planning.

Section 5 provides that the resolution shall take effect immediately.

Fiscal Impact

The adoption of this sense of the Council resolution has no fiscal impact. However, adoption of a mandatory inclusion zoning program by the Zoning Commission will likely require the enactment of legislation specifying administrative and enforcement actions to implement the program that would require an additional undetermined amount of funds and resources beyond those in existing agency budgets. To that extent, such legislation would need to be subject to the availability of appropriations.

Committee Action

On December 8, 2005, the Committee of the Whole held a public roundtable on PR 15-1194, "Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2004." Pursuant to Council Rule 450(c), the record from this roundtable is incorporated into the record of identical PR 16-47, "Sense of the Council in Support of Inclusionary Zoning Requirements Resolution of 2005;" at which Interim Planning Director Ellen McCarthy testified on behalf of the executive about the goals and issues related to mandatory and voluntary inclusionary zoning programs.

The following individuals testified at the public roundtable on PR 15-1194 in support of mandatory inclusionary zoning requirements: Frances Gemmell, DC League of Women Voters; Stephen Wade, Washington Regional Network for Livable Communities; Amanda Huron, Coalition for Nonprofit Housing and Economic Development; Nina Dastur, Catalyst Project Center for Community Change; Joslyn Williams, Metropolitan Washington Council AFL-CIO; Tad Baldwin, Ward 3 Smart Growth Coalition; Ed Lazere, DC Fiscal Policy Institute; Sharon Sneed, Empower DC; Melba Mosely, citizen; Michael Darby, Monument Realty; Rosemarie Flynn; Gray Panthers of Metropolitan Washington; Sachonho Hayes, Denise Rodriguez, Akela Edwards and Demear Scott, Youth Action Research Group, Shelley Moskowitz, Jews for Justice; Richard Flintop, Healthy Families Thriving Communities Collaborative, Janet Brown, Affordable Housing Alliance; and Elinor Hart, citizen.

The following individuals testified at the public roundtable on PR 15-1194 in opposition to mandatory inclusionary zoning requirements and in support of an incentive-based voluntary inclusionary zoning program instead: Jeffrey Gelman, Greenstein, DeLorme & Luchs; Charles Barber, DC Building Industry Association; Lamont Hoffman, PN Hoffman; Stanley Slotter, Paradigm Development, and Harold Nelson and Shaun Pharr, Apartment and Office Building Association.

Attached are written comments received by the Committee on PR 15-1994 and PR 16-47.

Prior to and since the Committee's public roundtables on these inclusionary zoning sense of the Council resolutions, the Council Chairman has facilitated or hosted a series of meetings with CMIZ advocates and representatives of the housing development community in an effort to reach consensus on major principles of a mandatory inclusionary zoning program and to mitigate some of the concerns expressed by the development community about such a program. The Committee commends each of the participants who engaged in these discussions and their good faith efforts to reach common ground. One of the first and most important outcomes of these discussions was the recognition that the mandatory affordable on-site set-aside would not apply where the additional zoning density was not available to be obtained. The Committee also commends the Office of Planning for its continuing analysis and efforts to craft a mandatory inclusionary zoning program that contains sufficient compensation in the form of bonus density, and the appropriate balance between predictability and flexibility, to ensure that the required set-aside does not create a disincentive to housing development in the District.

On July 6, 2005, the Committee of the Whole met in an additional meeting to consider PR 16-47. Chairman Cropp moved approval of the Committee Print of PR 16-47. Councilmember Mendelson moved an amendment, which was accepted by Chairman Cropp, to add language about recent reductions in the real property tax rate for homeowners and renters and a recent increase in the homestead deduction for homeowners. Chairman Cropp moved approval of the amended Committee Print of PR 16-47 and this Report, which were approved by voice votes (Chairman Cropp and Councilmembers Ambrose, Brown, Catania, Evans, Fenty, Graham, Gray, Mendelson, Orange, Patterson and Schwartz present; Councilmember Barry absent).

Attachments

- 1 PR 16-47 and PR 15-1194 as introduced
- 2 Written statements submitted on PR 16-47 and PR 15-1194
3. Committee Print of PR 16-47